



Billing Code (3410-XV-U)

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

RIN 0575-AC88

Single Family Housing Direct Loan Program

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency) published a proposed rule on August 23, 2013, to amend its regulations for the section 502 direct single family housing loan program to create a certified loan application packaging process. Through this action, revisions are being made to the rule based on an evaluation of the public comments received as well as the results of the pilot program RHS began in 2010 to test changes to the loan application packaging process. This final rule will impose reasonable experience, training, structure, and performance requirements on eligible service providers;

and it will regulate the packaging fee permitted under the process.

By establishing a vast network of competent, experienced, and committed Agency-certified packagers, this action is intended to benefit low- and very low-income people who wish to achieve homeownership in rural areas by increasing their awareness of the Agency's housing program, increasing specialized support available to them to complete the application for assistance, and improving the quality of loan application packages submitted on their behalf.

DATES: The effective date for the final rule is [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Brooke Baumann, Branch Chief, Single Family Housing Direct Loan Division, USDA Rural Development, Stop 0783, 1400 Independence Avenue, S.W., Washington, DC 20250-0783, Telephone: 202-690-4250. E-mail: brooke.baumann@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Title V, Section 1480(k) of the Housing Act authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil

Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect packaged loan applications received prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the certified loan application packaging process. Small entities engaged in this process will not be affected to a greater extent than large entities engaged in this process.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. However, in an effort to raise Tribal and Tribal Housing Authority awareness and interest in the proposed rule

published on August 23, 2013, RHS co-hosted a webinar and teleconference with the National American Indian Housing Council on November, 6, 2013, during the extension of the public comment period. Thirty-nine Indian Housing and Tribal staff from around the country registered for the webinar and teleconference to learn about the proposed certified loan application packaging process. Participants were encouraged to provide feedback during the webinar and teleconference as well.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) requires that OMB approve all collections of information by a Federal agency before they can be implemented. Under the proposed rule, qualified employers were required to provide monthly reports to the Agency outlining the packaging activities of their Agency-certified packager(s). The estimated total annual burden on respondents was 6,300 hours.

After gauging the benefits and limitations of the reporting under the packaging pilot program and in light of public comments received, the monthly reporting requirement outlined in § 3550.75 (b) (2) (iv) was removed. This rule does not impose any new or modified information collection requirements.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act, 44 U.S.C. 3601 et. seq., to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

I. Background

The section 502 direct single family housing loan program provides subsidized mortgage loans for modest homes in rural areas to primarily first-time homebuyers who are low- and very low-income. While loan approval and underwriting are functions of the Agency staff, the Agency's nonprofit and public partners often play a role in educating potential homebuyers in homeownership and in originating section 502 loans.

Loan application packaging, which is an optional service, is not new to the program; it has been permitted under the program for decades. Loan application packagers, who are separate and independent from the Agency, play an important role in increasing awareness of the section 502 program among potential homeowners and provide a valuable service to potential homeowners.

To address weaknesses in the existing loan application process and to integrate the lessons learned from the packaging pilot program, which began in Fiscal Year 2010 and introduced the use of intermediaries in the packaging process, RHS published a proposed rule on August 23, 2013, (78 FR 52460-52464) to amend its regulations for the section 502 direct single family housing loan program to create a certified loan application packaging process.

II. Discussion of Relevant Public Comments Received on August 23, 2013, Proposed Rule

The original 60-day comment period for the proposed rule, which ended on October 22, 2013, was extended to November 22, 2013, due to the lapse in Federal funding that caused a partial closing of Federal government operations from October 1 through October 16, 2013. Notice of the extension was published on November 1, 2013 (78 FR 65582). A total of 34 comments were received. Commenters included affordable housing nonprofit organizations, the National Council of State Housing Agencies, the National Rural Housing Coalition, and the general public. Comments on the role of the intermediaries. The Agency received several comments on the role of the intermediaries in the process. As outlined in the proposed rule, intermediaries would perform quality assurance reviews and monitoring activities on individuals seeking or who have been designated as an Agency-certified loan application packager and their qualified employers. Some called for the complete removal of the intermediaries while some called for a tightening of the requirements to become one (i.e. require the organization to demonstrate financial viability, have at least one recommendation from a Rural Development State Office, etc.) and/or expanding their role (i.e. allow them to order critical items, require their involvement in all packaged loan applications, allow them to perform quality assurance reviews on self-help loans, etc.).

Agency Response: In light of the intermediaries' overall performance under the pilot, which included successes and shortcomings, the Agency will strengthen the requirements to be an intermediary while relaxing the requirements to be a qualified employer to allow startups to participate in the certified loan application packaging process. An intermediary will be involved in the process unless a qualified employer and their certified packaging staff obtains approval from the applicable Rural Development State Director to opt not to go through an

intermediary based on the quality of the loan application packages submitted by the qualified employer and their certified packaging staff. The "opt out" request is optional. Qualified employers and their certified packaging staff that are performing at or above the required standards may choose to continue to funnel their packaged loan applications through an intermediary for their own reasons.

For qualified employers and their certified packaging staff that received approval to "opt out," the State Director will determine if they must subsequently submit through an intermediary instead of directly to the Agency if performance issues should occur. Guidelines for State Directors will be included in the program's handbook to ensure uniformity.

The criteria to be an intermediary will be revised to clarify that intermediaries will be required to provide supplemental training, technical assistance, and support to those qualified employers and their Agency-certified packaging staff that are required to funnel their packages through them since one of the primary goals of an intermediary is to cultivate high performance. As further detailed in the program's handbook, supplemental training and technical assistance will address, among other things, any areas for improvement discovered during the quality assurance reviews and explain any changes to program guidance.

The criteria will also be revised to require an intermediary to be, to the Agency's satisfaction, a Section 501 (c) (3) nonprofit organization or public agency in good standing in the State(s) of its operation with the capacity to promptly serve (as detailed in the program's handbook) multiple qualified employers and their Agency-certified loan application packagers throughout an entire State or preferably throughout entire States; be financially viable as evidenced

by an audit paid for by the applicant seeking to be an intermediary; and demonstrate that their quality assurance staff has experience with packaging, originating, or underwriting affordable housing loans. After the initial application process, intermediaries may be required to periodically demonstrate that they still meet specified criteria.

An intermediary will continue to be prohibited from having a financial interest in the property for which the application package is submitted since this helps ensure an unbiased and objective quality assurance review. A qualified employer and/or Agency-certified packager, however, will be permitted to have a financial interest in the property since many offer acquisition and rehabilitation programs or other programs that promote affordable housing and improve a community's housing stock. However, a qualified employer and/or Agency-certified packager must notify the Agency and applicant of any financial interest in the property. In addition, the Agency may prohibit a qualified employer and/or Agency-certified packager from receiving part or all of the packaging fee if the financial interest is improper or the qualified employer and/or Agency-certified packager has a history of improperly using its position when a financial interest exists.

To complement the above, the proficiency requirement outlined in § 3550.75(b)(1)(iv) was removed, although an individual must still meet the requirements in 3550.75(b)(1)(i) through (iv); and the experience requirement outlined in § 3550.75(b)(2)(iii) was removed, although a qualified employer must still meet the requirements in 3550.75(b)(2)(i) through now (v).

Following the publication of this rule, a **Federal Register** notice of the Agency's intent to accept applications to be an intermediary under the regulation will be published. Intermediaries operating under

the packaging pilot program are not guaranteed an intermediary role beyond their participation in the pilot program (which ends at the earlier of either the end date of the agreement between the pilot intermediary and the Agency, or the effective date of this final rule) and will be subject to this application process should they wish to serve as an intermediary under the regulation. Periodically, the Agency will issue such notices to give interested parties an opportunity to apply to be an intermediary, require existing intermediaries to demonstrate that they still meet the requirements under the regulation, and ensure there are a sufficient number of qualified intermediaries engaged in the certified loan application packaging process.

Comments on the loan application packaging fee and compensation.

The Agency received several comments on the packaging fee. Some called for the packaging fee to be reduced or eliminated. Some called for the packaging fee to be increased or a percent of the loan amount. Within this subset, it was also stated that compensation should be allowed even if the packaged loan application does not result in a closed loan and that the Agency should pay for all or a portion of the fee and provide technical assistance funding to the Agency-certified packagers for marketing, prescreening, and other related items.

Agency Response: The language under § 3550.52 will state that, "The fee may not exceed two percent of the national average area loan limit as determined by the Agency and may be limited further at the Agency's discretion." However, the program's handbook will initially specify that the fee may be up to, but not exceed, \$1,500. If the qualified employer and their certified packaging staff are required to go through an intermediary, the fee will remain the same but they will

have to share a portion of the fee with the intermediary. The parties will negotiate how the fee is shared exclusive of any Agency involvement.

Comments were made that mortgage lenders and brokers traditionally earn a minimum of 250 basis points in originating private sector mortgages. Although these services share some similarities, packaging a section 502 loan and originating a private mortgage are not the same. For example, originating a private mortgage generally includes processing an application, underwriting and funding a loan, and other administrative services. Packagers in the section 502 program do not underwrite, approve, or fund loans on behalf of the Agency.

Compensation will only be allowed for closed loans. This condition is currently in effect for the protection it affords parties who wish to seek a section 502 loan but who are clearly ineligible.

Other than using program funds to include the packaging fee in the borrower's loan when permissible and travel funds for a designated Agency staff member to attend classroom sessions offered by non-Agency trainers, the Agency will not use funds to operate the certified loan application packaging process.

Comments on the adverse impact the rule will have on small nonprofits that have been effectively providing abbreviated packaging services to Agency applicants for years. Some commenters expressed concerns that the requirements of the certified loan application packaging process, such as the training component, would force out small nonprofits currently engaged in packaging.

Agency Response: Language will be added to § 3550.52, "Loan Purposes", that states, "Nominal packaging fees not resulting from the

certified loan application process are an eligible cost provided the fee is no more than \$350; the loan application packager is a nonprofit, tax exempt partner that received an exception to all or part of the requirements outlined in § 3550.75 from the applicable Rural Development State Director; and the packager gathers and submits the information needed for the Agency to determine if the applicant is preliminarily eligible along with a fully completed and signed uniform residential loan application."

Comments on whether loan applications packaged under this process should be considered as a fourth funding priority item. The Agency received several comments on the funding priority classification. Some stated that fourth funding priority or higher was critical to the success of the certified loan application packaging process. Within this subset, it was also stated that processing priority was imperative. Some stated that giving fourth funding priority to applications received under this process would be unethical and discriminatory.

Agency Response: After weighing the comments for and against, it was decided that loans packaged under this process will not receive fourth funding priority unless the Administrator decides that such a temporary classification is necessary nor will they receive processing priority though the Agency will examine the program's guidance to ensure that both tracks (packaged or non-packaged) are treated equitably. As noted by one commenter, "As it stands today, the items that receive fourth priority ultimately allow the agency to assist more income-limited persons by reducing the agency loan amount for transactions involving sweat equity or supplemental financing from outside sources. Giving fourth priority to applications packaged under this process only benefits a particular borrower and actually places

them in a position where this service is not exactly optional.”

However, § 3550.55 (c) will be revised to include the following guidance at the end of the paragraph: “Applications received through the certified loan application packaging process do not, by themselves, warrant a higher priority; though the Administrator may temporarily reclassify them as fourth priority when determined appropriate.” Any such reclassification will be published in a **Federal Register** notice.

Comments on the experience requirement placed on an individual who wishes to become an Agency-certified packager. One commenter suggested that the requirement be revised from “have at least one year of real estate and/or mortgage experience” to “have at least one year of affordable housing loan origination and/or affordable housing counseling experience”. One commenter asked for the rationale behind this experience requirement. One commenter suggested this requirement be removed.

Agency Response: The minimum relevant experience requirement (along with the other requirements), helps ensure that Agency-certified packagers have the needed knowledge, skills, and abilities to provide this service. The Agency agrees that experience with affordable housing loan origination and/or affordable housing counseling is more relevant given the nature of the section 502 direct single family housing loan program and the income categories it is designed to serve, and has revised § 3550.75(b)(1)(i) accordingly.

Comments on the employment relationship between the Agency-certified packager and the qualified employer. Some commenters requested clarity on the nature of the relationship and one requested that contract arrangements be permitted.

Agency Response: It will be clarified that employed means as an employee or as an independent contractor.

Comment specific to the States' Housing Finance Agencies (HFAs).

One commenter suggested that the States' HFAs be allowed to serve as qualified employers or as intermediaries regardless of their composition (public agency or quasi-government entity established by the State as an independent authority and public corporation) and their experience with the Agency's programs.

Agency Response: Given the States' HFAs purpose, vision, and structure, the Agency agrees with this comment and is revising § 3550.75(b) (2) and (3) accordingly. A similar allowance will also be extended to tribal housing authorities though this allowance will be limited to serving as qualified employers since tribal housing authorities focus on Indian housing needs and not necessarily statewide housing needs.

Comments on compliance with the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act). Several commenters expressed concern that compliance with the SAFE Act would be overwhelmingly burdensome and costly.

Agency Response: As noted in the Paperwork Reduction Act section, the monthly reporting requirement outlined in § 3550.75(b) (2) (iv) was removed and along with it the reference to the SAFE Act. The SAFE Act provides for the licensing and registration of mortgage loan originators, and includes provisions requiring all States to establish a licensing and registration scheme for mortgage loan originators who are not employed by federal agencies or Agency-regulated institutions. The Consumer Financial Protection Bureau

published regulations regarding the State requirements at 12 CFR part 1008 (Regulation H).

The Agency does not have the authority under the SAFE Act to enforce or monitor SAFE Act compliance. However, the Agency believes that certified loan application packagers meeting the requirements of this rule are not "mortgage loan originators" subject to the SAFE Act or Regulation H because certified loan application packagers do not "offer or negotiate terms" of loan and therefore do not meet the criteria of "mortgage loan originators". See 12 CFR 1008.103(c)(2). Specifically, certified loan application packagers will not communicate with a borrower or prospective borrower "for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms." Rather, it is the Agency that underwrites the loan, makes a final decision about the loan terms, and communicates those terms to the borrower. The mutual understanding regarding the loan terms is between the borrower and the Agency – the certified loan packager is not a party to the mutual understanding.

Even if the activities of a certified loan application packager were to be considered those of a mortgage loan originator, a State may exempt an individual from the State requirements if that individual is an employee of a bona fide nonprofit organization who acts as a loan originator only as part of work duties to the nonprofit organization and with respect to residential mortgage loans with terms favorable to the borrower. See 12 CFR 1008.103(e)(7)(i).

Commenters were misinterpreting the reference to mean that the Agency would require SAFE Act compliance even when the State does not.

Comments on the Agency-approved loan application packaging course and continuing training. Comments included: Ensure that the training

is readily available and not cost prohibitive; consider offering an online version; underscore the Agency's oversight role in the management of the curriculum development and revisions as well as participation records; add a continuing education requirement; and do not require attendees of past three-day classroom training sessions (offered since August 2009) to retake the training.

Agency Response: Reference to a "three-day classroom" session will be removed from the final rule to allow for flexibility in the training's delivery method and guidance will be added to the program's handbook to underscore the Agency's oversight role. In addition, § 3550.75(c)(3) will be changed from "Non-Agency trainers, who will be limited to housing nonprofit organizations..." to "Non-Agency trainers, who will generally be limited to housing nonprofit organizations but may in rare cases include public bodies such as public universities..." and from "...and course materials; and bear the cost of providing the training. The course schedule must be approved by RHS and each session will be attended by a designated Agency staff member. A list of eligible non-Agency trainers will be published on the Agency's website..." to "...and updated course materials; and bear the cost of providing the training though a reasonable tuition fee may be charged the course participants. The course content, schedule, and tuition must be approved by RHS and a designated Agency staff member will typically participate in each training session to ensure accuracy of the program information and to serve as a program resource. A list of eligible non-Agency trainers, which is subject to change based on the non-Agency trainers' performance, will be published by the Agency..." These changes are being made to increase the availability of the training and to clarify how the trainers will be compensated and the oversight that will be provided by the Agency.

In regards to continuing education, § 3550.75(e) states that the Agency will stipulate any training and performance requirements for retaining a designation. Additional guidance on this issue will be provided in the program's handbook.

The Agency will recognize the attendance of past training sessions provided the attendee fully attended a three-day classroom course jointly presented by the Agency and one of three sponsoring nonprofit organizations (NeighborWorks, the Housing Assistance Council, or the Rural Community Assistance Corporation), and passed the online exam. If the training was taken more than three years ago (from the effective date of this final rule), recognition will also be subject to the attendee having submitted at least one viable packaged loan application between passing the course and the effective date of this final rule.

Comment to require Agency-certified packagers to perform in a manner that does not adversely impact the Agency's ability to meet its statutory requirement to make 40 percent of the program funds available to very low-income persons nationwide and 30 percent on a state level.

Agency Response: The Agency agrees, and language was added under § 3550.75(f) to address this comment.

Comment to provide the acceptable rate of packaged loan applications in the regulation instead of referring to the program's handbook. A commenter believed the regulation should set forth the expectations.

Agency's Response: The Agency is not making changes to the final rule on this issue. The acceptable rate and the new rate added in response to the comment above will be published in the program's

handbook so that the Agency may make appropriate and timely adjustments.

Comments pertaining to the rule as it relates to the section 523 self-help program. Comments included: Clarify if grantees are subject to the rule's requirements, allow intermediaries to perform quality assurance reviews on self-help loans, and allow grantees to charge a packaging fee on self-help transactions.

Agency Response: Self-help projects and loans are excluded from the certified loan application process and from charging a packaging fee since grantees receive grant funds to package (among other things) and are provided technical and management assistance. However, a grantee and its staff may participate in the process for non-self-help loans provided they meet all the rule's requirements (i.e. grantees or technical and management assistance contractors and their staff do not automatically qualify as intermediaries, qualified employers, or Agency-certified packagers under the process).

Comments on improving the lines of communication between the Agency-certified packagers and the Agency before and after loan closing. Some commenters called for improved communication to boost performance before and after closing. One commenter believed that if notification was sent to the intermediary or packager when a loan they packaged went into default, they could help the homeowner get back on track and avoid foreclosure.

Agency Response: The program's handbook currently instructs packagers to issue a prescribed disclosure letter to interested parties. The disclosure letter includes a waiver of provisions to the Privacy Act of 1974. If a party permits it, the Agency will release to

and discuss with the packager any information they seek or request from the Agency's records concerning the person's application for Agency assistance. Under the packaging pilot program, this disclosure also includes the intermediary.

Clarification will be provided in the program's handbook that Agency staff should promptly contact the packager with specific information (e.g. the closing date once scheduled) regardless of the response to the Privacy Act waiver.

While the current waiver notes that the authorization will terminate upon loan closing or Agency denial of the loan application, appropriate changes may be made to extend this authorization beyond closing if/when the program's loan servicing system can be configured to issue servicing (i.e. delinquency) notifications to the packager as well.

Comments to allow packagers to obtain the residential mortgage credit report and the appraisal report that will be used in the Agency's decision. Several commenters thought this would streamline the process and expedite the Agency's decision making process.

Agency Response: While it is expected that the packager would do a preliminary check on a potential applicant's credit history (e.g. by having a process in place to order single repository infile reports at their own expense; by requesting the potential applicant to obtain a free report via www.annualcreditreport.com; etc.), the Agency must order the residential mortgage credit report through the program's loan origination system so that the reported liabilities and score can be automatically populated into the system. Having the credit report file

in the system will become even more critical when the program implements an automated underwriting system.

The Agency must manage the ordering of the appraisal to ensure that orders are only made when funds are available to process the loan request and to ensure the equitable ordering of services among appraisers who have blanket purchase agreements with the Agency. The Agency can only accept an appraisal obtained from a third-party when that third-party is a lender participating in the transaction and has a risk of loss at stake.

Comments on whether limiting qualified employers and intermediaries to nonprofit entities (and public agencies) would provide better protection to borrowers and the government or increase the packaging fees by limiting competition.

Agency Response: The commenters that addressed this item were almost unanimously agreed that limiting the process to nonprofits (and public agencies) provided better protection while not adversely impacting the fee. The Agency agrees, and the program's handbook will elaborate on what constitutes a public agency and provide examples.

III. Discussion of Non-Relevant Public Comments Received on August 23, 2013, Proposed Rule

Comments on considering alternatives to how the Agency currently conducts the applicant orientation, which is generally handled on an individual application basis in person or over the phone (using Form RD 3550-23, Applicant Orientation Guide).

Agency Response: This suggestion will be taken under consideration but separate from this rulemaking.

Comments to allow qualified third-parties to complete the final inspection on new constructions.

Agency Response: The Agency is in the process of issuing a rule that consolidates and updates certain regulations dealing with constructions; one of those regulations is Rural Development Instruction 1924-A that outlines the final inspection requirements.

In the interim, internal guidance was approved on April 29, 2013, and on July 15, 2013, addressing alternative measures that may be used to fulfill the program's inspection requirements.

Comments to update the program's loan origination system, give packagers access to the system, and adopt industry-standard technologies.

Agency Response: The Agency launched a department wide initiative in 2009 to create an intuitive, integrated information technology platform to support its mission. Given the complexity of the initiative, implementation is multiphase and spans several years.

In the interim, projects are underway in the program to create an automated underwriting system for internal use and to modify an existing system to allow packagers to upload applications into program's loan origination system.

Comments to use tri-merged credit reports instead of residential mortgage credit reports in the program's decision making process.

Agency Response: The use of tri-merged credit reports will be considered when preparing the next solicitation for credit services, which will occur in Fiscal Year 2015, as part of the Agency's ongoing process improvements.

Comment to allow direct endorsement underwriting by Agency-approved third parties.

Agency Response: Currently, only agency staff may perform underwriting, loan approval and obligation of funds. Loan application packaging is permissible since packagers perform certain non-discretionary tasks in the origination process.

The agency is also removing the language concerning packaging fees for section 504 transactions from § 3550.52(d)(6), since this eligible cost is already covered under § 3550.102(d)(5).

List of Subjects in 7 CFR Part 3550

Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Accounting, Housing, Loan programs—Housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

For the reasons stated in the preamble, chapter XXXV, Title 7 of the Code of Federal Regulations, is amended as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

2. Section 3550.10 is amended to add new definitions of "Agency-approved intermediary", "Agency-certified loan application packager", "National average area loan limit", and "Qualified employer" to read as follows:

§ 3550.10 Definitions.

* * * * *

Agency-approved intermediary. An affordable housing nonprofit, public agency, or State Housing Finance Agency approved by RHS to perform quality assurance reviews on packages prepared by Agency-certified loan application packagers through their qualified employers. See § 3550.75 for further details.

Agency-certified loan application packager. An individual certified by RHS under this subpart to package section 502 loan applications while employed (either as an employee or as an independent contractor) by a qualified employer. See § 3550.75 for further details.

* * * * *

National average area loan limit. Across the nation, the average area loan limit as specified in § 3550.63(a). The national average is considered when determining the maximum packaging fee permitted under the certified loan application packaging process under the section 502 program.

* * * * *

Qualified employer. An affordable housing nonprofit organization, public agency, tribal housing authority, or State Housing Finance Agency that meets the requirements outlined in § 3550.75(b)(2) and is involved in the certified loan application packaging process under the section 502 program.

* * * * *

Subpart B—Section 502 Origination

3. Section 3550.52 paragraph (d) (6) is revised to read as follows:

§ 3550.52 Loan purposes.

* * * * *

(d) * * *

(6) Packaging fees resulting from the certified loan application packaging process outlined in § 3550.75. The fee may not exceed two percent of the national average area loan limit as determined by the Agency and may be limited further at the Agency's discretion. Nominal packaging fees not resulting from the certified loan application process are an eligible cost provided the fee is no more than \$350; the loan application packager is a nonprofit, tax exempt partner that received an exception to all or part of the requirements outlined in § 3550.75 from the applicable Rural Development State Director; and the packager gathers and submits the information needed for the Agency to determine if the applicant is preliminarily eligible along with a fully completed and signed uniform residential loan application.

* * * * *

4. Section 3550.55 paragraph (c) (5) is revised to read as follows:

§ 3550.55 Applications.

* * * * *

(c) * * *

(5) Applications from applicants who do not qualify for priority consideration in paragraphs (c)(1), (2), (3), or (4) of this section will be selected for processing after all applications with priority status have been processed. The Administrator may temporarily reclassify applications received through the certified loan application packaging process as fourth priority when determined appropriate.

* * * * *

5. Section 3550.75 is added to read as follows:

§ 3550.75 Certified loan application packaging process.

Persons interested in applying for a section 502 loan may, but are not required to, submit an application through the certified loan application packaging process.

(a) General. The certified loan application packaging process involves individuals who have been designated as an Agency-certified loan application packager, their qualified employers, and, if required by the State Director, Agency-approved intermediaries.

(b) Process requirements. To package section 502 loan applications under this process, each of the following conditions must be met:

(1) Agency-certified loan application packager. An individual who wishes to acquire RHS certification as a loan application packager must meet all of the following conditions:

(i) Have at least one year of affordable housing loan

origination and/or affordable housing counseling experience;

(ii) Be employed (either as an employee or as an independent contractor) by a qualified employer as outlined in paragraph (b) (2) of this section;

(iii) Complete an Agency-approved loan application packaging course and successfully pass the corresponding test as specified in paragraph (c) of this section; and

(iv) Submit applications to the Agency via an intermediary if determined necessary by a State Director.

(2) Qualified employer. Individuals who have been designated as an Agency-certified loan application packager must be employed (either as an employee or as an independent contractor) by a qualified employer. To be considered a qualified employer, the packager's employer must meet each of the conditions specified in paragraphs (b) (2) (i) through (v) of this section. Tribal housing authorities and the States' Housing Finance Agencies are eligible and are exempt from the conditions specified in paragraphs (b) (2) (i) through (ii) of this section.

(i) Be a nonprofit organization or public agency in good standing in the State(s) of its operation.

(ii) Be tax exempt under the Internal Revenue Code and be engaged in affordable housing per their regulations, articles of incorporation, or bylaws.

(iii) Notify the Agency and the applicant if they or their Agency-certified packager(s) are the developer, builder, seller of, or have any other such financial interest in the property for which the application package is submitted. The Agency may disallow a particular qualified employer and/or Agency-certified packager from receiving part or all of a packaging fee if the Agency determines that the financial

interest is improper or the qualified employer or Agency-certified packager has a history of improperly using its position when there has been a financial interest in the property.

(iv) Prepare an affirmative fair housing marketing plan for Agency approval as outlined in RD Instruction 1901-E (or in any superseding guidance provided in the impending RD Instruction 1940-D).

(v) Submit applications to the Agency via an intermediary if determined necessary by a State Director.

(3) Agency-approved intermediaries. To become an Agency-approved intermediary, an interested party must apply and demonstrate to the Agency's satisfaction that they meet each of the conditions specified below. The States' Housing Finance Agencies, however, are exempt from the conditions specified in paragraphs (b) (3) (i) through (v). After the initial application process, the Agency may require intermediaries to periodically demonstrate that they still meet the following criteria.

(i) Be a section 501 (c) (3) nonprofit organization or public agency in good standing in the State(s) of its operation with the capacity to serve multiple qualified employers and their Agency-certified loan application packagers throughout an entire State or preferably throughout entire States and with the capacity to perform quality assurance reviews on a large volume of packaged loan applications within an acceptable period of time as determined by the Agency;

(ii) Be engaged in affordable housing in accordance with their regulations, articles of incorporation, or bylaws;

(iii) Be financially viable and demonstrate positive operating performance as evidenced by an independent audit paid for by the applicant seeking to be an intermediary;

(iv) Have at least five years of verifiable experience with the Agency's direct single family housing loan programs;

(v) Demonstrate that their quality assurance staff has experience with packaging, originating, or underwriting affordable housing loans.

(vi) Develop and implement quality control procedures designed to prevent submission of incomplete or ineligible application packages to the Agency;

(vii) Ensure that their quality assurance staff complete an Agency-approved loan application packaging course and successfully pass the corresponding test;

(viii) Not be the developer, builder, seller of, or have any other such financial interest in the property for which the application package is submitted; and

(ix) Provide supplemental training, technical assistance, and support to certified loan application packagers and qualified employers to promote quality standards and accountability; and to address areas for improvement and any changes in program guidance.

(c) Loan application packaging courses. Prospective loan application packagers must successfully complete an Agency-approved course that covers the material identified in paragraph (c)(1) of this section. Prospective intermediaries must also successfully complete an Agency-approved course as specified in paragraph (c)(2) of this section.

(1) Loan application packagers. At a minimum, the certification course for individuals who wish to become Agency-certified loan application packagers will provide:

(i) An in-depth review of the section 502 direct single family housing loan program and the regulations and laws that govern the

program (including civil rights lending laws such as the Equal Credit Opportunity Act, Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973);

(ii) A detailed discussion on the program's application process and borrower/property eligibility requirements;

(iii) An examination of the Agency's loan underwriting process which includes the use of payment subsidies; and

(iv) The roles and responsibilities of a loan application packager and the Agency staff.

(2) Intermediaries. The required course for an intermediary's quality assurance staff will cover the components described in paragraph (c)(1) of this section and other information relevant to undertaking quality assurance, technical assistance, and training functions in support of the qualified employers and their Agency-certified loan application packagers.

(3) Non-Agency trainers. Prior to offering the required course to packagers and intermediaries, non-Agency trainers must obtain approval from designated Agency staff. Non-Agency trainers, who will generally be limited to housing nonprofit organizations but may in rare cases include public bodies such as public universities, must provide proof of relevant experience and resources for delivery; present evidence that their individual trainers are competent and knowledgeable on all subject areas; submit course materials for Agency review; agree to maintain attendance records, test results, and updated course materials; and bear the cost of providing the training though a reasonable tuition fee may be charged the course participants. The course content, schedule, and tuition must be approved by RHS and a designated Agency staff member will typically participate in each training session to ensure accuracy of the program information and to

serve as a program resource. A list of eligible non-Agency trainers, which is subject to change based on non-Agency trainers' performance, will be published by the Agency.

(d) Confidentiality. The Agency-certified loan application packager, qualified employer, Agency-approved intermediary and their agents must safeguard each applicant's personal and financial information.

(e) Retaining designation. The Agency will meet with the Agency-certified loan application packager, their qualified employer, and Agency-approved intermediary (if applicable) at least annually to maintain open lines of communication; discuss their packaging activities; identify and resolve deficiencies in the packaging process; and stipulate any training requirements for retaining designation (including but not limited to civil rights refresher training).

(f) Revocation. The designation as an Agency-certified loan application packager or Agency-approved intermediary is subject to revocation by the Agency under any of the following conditions:

(1) The rate of submitted packaged loan applications that receive RHS approval is below the acceptable limit as determined by the Agency;

(2) The rate of submitted packaged loan applications from very low-income applicants is below the acceptable level as determined by the Agency;

(3) Violation of applicable regulations, statutes and other guidance; or

(4) No viable packaged loan applications are submitted to the Agency in any consecutive 12-month period.

March 31, 2015.

Tony Hernandez,
Administrator
Rural Housing Service.

Date

[FR Doc. 2015-09958 Filed: 4/28/2015 08:45 am; Publication Date: 4/29/2015]